

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

DAVID JAMES FOUGERE

PLAINTIFF

v.

Civil No. 06-5193

CAPTAIN HUNTER PETRAY;
DR. NEIL MULLINS; and
NURSE SUE McDONALD

DEFENDANTS

ORDER

Defendants have filed a motion for summary judgment (Doc. 18). To assist plaintiff in responding to the summary judgment motion, the undersigned is propounding a questionnaire. The court will consider plaintiff's response to the questionnaire in issuing a report and recommendation on the summary judgment motion.

For this reason, David James Fougere is hereby directed to complete, sign, and return the attached response to defendants' summary judgment motion on or before **July 26, 2007**. **Plaintiff's failure to respond within the required period of time may subject this matter to dismissal for failure to comply with a court order.**

IT IS SO ORDERED this 3rd day of July 2007.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE

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DEFENDANTS

RESPONSE TO SUMMARY JUDGMENT MOTION

TO: DAVID JAMES FOUGERE

These questions and answers will serve as your response to the motion for summary judgment filed by the defendants. You may use additional sheets of paper in responding to these questions. You must file this response by **July 26, 2007**.

1. You were booked into the Benton County Detention Center on May 31, 2006, on charges of possession of a controlled substance.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to the Defendants' Exhibit 1 at page 1.

2. You were to be seen by Nurse McDonald on June 2, 2006, but were in court.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 17.

3. On June 8, 2006, you were seen by Dr. Mullins for a complaint that you tooth hurt and your ribs hurt.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 15.

4. Upon examination, Dr. Mullins noted you had some pain in your upper left rib area, lateral to your nipple. Dr. Mullins did not see any bruising, contusions, or swelling. He asked if you were in a fight and you replied something like that.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 15.

5. Dr. Mullins also noted your upper right wisdom tooth was broken off with about one third of the wisdom tooth remaining. Dr. Mullins noted it had been that way a long time. When he asked you how long it had been since you had seen a dentist, you indicated you could not recall.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 15.

6. Dr. Mullins diagnosed you with chronic dental caries, right upper wisdom tooth, and a possible contusion to the left upper rib cage. He prescribed antibiotics, PEN VK, for ten days, Ibuprofen for four days, and concluded you did not need any special medication for your ribcage.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 15.

7. Nurse McDonald treated you on June 16, 2006, and prescribed triamcinolone cream for rash to the front of your legs for six nights.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 17.

8. Nurse McDonald examined you on June 21, 2006, and gave you Ibuprofen for ten days for a toothache and noted your upper molar was rotten.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 17.

9. Nurse McDonald saw you on June 27, 2006, and gave you antacid tablets for ten days for acid reflux. She noted you stated that your doctor in Vermont had put you on stress meds. She stated she would fax a release.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 17.

10. You were seen by Nurse McDonald on July 5, 2006, and instructed to gargle with warm salt water, twice a day, and given Ibuprofen and Benadryl.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 17.

11. You were to be seen by Nurse McDonald on July 10, 2006, but you were in court.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

17.

12. You were seen by Dr. Mullins on July 11, 2006, for a complaint that you tooth was chipped off and bothering you. Dr. Mullins noted that your right upper molar had broken in half. He noted the rest of your teeth looked to be in quite good dental repair.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

16.

13. Dr. Mullins diagnosed chronic dental caries, prescribed an antibiotic, Keflex, for ten days, Ibuprofen for four days, and put you on the list to see the dentist.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

16.

14. You were seen by Dr. Mullins on July 19, 2006. You complained of being stressed out and also asked if you could have more Ibuprofen for your tooth until you saw the dentist.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 18.

15. Dr. Mullins noted you had an appointment with the dentist. He also noted you were writing multiple requests and talking about seeking pills for a solution to your problem. Dr. Mullins diagnosed you with chronic dental caries and some stress. He prescribed Thorazine, twice a day, and Ibuprofen for ten days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 18.

16. You were seen by Dr. Mullins on August 1, 2006. You were complaining of stress.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 19.

17. You had just had your tooth pulled and it was healing well. You stated the Thorazine was not helping. Dr. Mullins stated that we lived in a pill orientated society and he was not going to give you pills to try to solve all your problems. You replied you didn't want pills to solve all your problems.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 19.

18. When Dr. Mullins told you that he was not going to give you anything for stress,

you said you were having heartburn. Dr. Mullins diagnosed you with questionable GERD. He prescribed antacid tablets for seven days and discontinued the Thorazine.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 19.

19. On August 28, 2006, you submitted a medical request stating that you had been having anxiety attacks since you had been at the BCDC. You stated that at one point you had been put on Thorazine but it didn't work and you didn't like the way it made you feel. You stated you were still having anxiety attacks and it couldn't be good for you. In response, you were put on the list to see the doctor.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 1.

20. Did you see the doctor or nurse following your August 28th request?

Answer: Yes _____ No _____.

If you answered yes, please state: (a) who you saw; (b) when you saw them; and (c) what treatment you received.

If you answered no, please state if you received any response to your request.

21(A). On August 29, 2006, you submitted another medical request. You stated you were suffering from stress and anxiety. You indicated the Thorazine did not work and they got mad and now they were ignoring your medical problem. You stated one medicine did not work for everyone. In response, Nurse McDonald wrote that no one got mad.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 33.

(B). Did you see the doctor or nurse following your August 29th request?

Answer: Yes _____ No _____.

If you answered yes, please state: (a) who you saw; (b) when you saw them; and (c) what treatment you received.

If you answered no, please state if you received any medical treatment.

22. On August 31st you submitted a grievance about your medical requests about anxiety being ignored. You stated the doctor got mad when you stated the Thorazine was not helping you and gave you the shakes. You indicate the doctor took you off the Thorazine and was not ignoring the problems you had with anxiety attacks. You stated the attacks could not be good for your heart. In response, Captain Petray stated he would forward your grievance to medical. Petray stated the doctor made all medical decisions in the jail.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

3.

23. On September 14th you submitted another grievance about your anxiety attacks. You stated that you needed medication for anxiety. In response, Captain Petray said he would forward your grievance to medical. He indicated the doctor made all medical decisions in the jail.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

4.

24. On September 18th you submitted a medical request for treatment for headaches and anxiety attacks. A note was made on your request, that you were to see the nurse.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

5.

25. Did you see the doctor or nurse following your September 18th request?

Answer: Yes _____ No _____.

If you answered yes, please state: (a) who you saw; (b) when you saw them; and (c) what treatment you received.

If you answered no, please state if you received any medical treatment.

26. On September 25th you put in a medical request regarding stress. You stated you had put in several requests about stress and anxiety attacks. You indicated that at one point you had been put on Thorazine but you didn't like the way it felt so you were taken off that and since then your problem had been ignored. You stated one medication did not work for everyone. In response, you were put on the list to see the doctor.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 6.

27. You were seen by Dr. Mullins on September 27th. He noted you complained that you were not eating or sleeping well. You stated you had a lot of stress in your life and would like something for it. You indicated the Thorazine did not help any. Dr. Mullins determined you had some acute anxiety and stress. He prescribed Amitriptyline and decided to observe your behavior.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 20.

28. On September 28th you submitted a medical request complaining you had really dry skin. The Nurse responded that you had been seen by Dr. Mullins the day before and didn't mention it at all.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 7.

29. You were seen by Dr. Mullins again on October 3rd for anxiety and he prescribed Elavil.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 22.

30. On October 9th you submitted a medical request complaining that the medication you were on ran out. You also stated you needed something for the skin on your legs. In response, you were to see the nurse.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 9.

31. Did you see the doctor or nurse following your October 9th request?

Answer: Yes _____ No _____.

If you answered yes, please state: (a) who you saw; (b) when you saw them; and (c) what treatment you received.

If you answered no, please state if you received any medical treatment.

32. On October 16th you submitted a medical request. You complained that you had been getting Amitriptyline and Elavil for awhile but they were not working as well. You stated you could not sleep. You stated you were having more stress.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 10.

33. In response, Nurse McDonald wrote that the doctor prescribed what he deemed necessary and it was true the more drugs you take the more you become used to them. She stated Dr. Mullins did not give drugs to help inmates sleep so you would have to get along with what the doctor prescribed.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 10.

34. On October 17th you submitted a medical request asking to see the doctor about your medication and a rash. You were put on the list to see the doctor on Friday.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 11.

35. You were examined by Dr. Mullins on October 27th and diagnosed with a pustule on your leg and given Keflex, an antibiotic, and Mylanta.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 22.

36. On November 4th you submitted a request asking to see the doctor as soon as possible. In response, you were put on the list to see the doctor on the 8th.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 12.

37. You were seen by Dr. Mullins on November 8th and Elavil was prescribed.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 22.

38. On November 8th you submitted a medical request. You stated the doctor had told you that you would get your medication in the morning and evening but the medication sheet stated morning and dinnertime. You asked that the medication sheet be changed or that you be put on the doctor's list so you could talk to him about it.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 13.

39. In response, you were put on the list to talk to the doctor on November 13th.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 13.

40. You were seen by the doctor on November 13th for a pustule on your nose and given Keflex for five more days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 22.

41. Did you get the issue with the timing of your medication taken care of?

Answer: Yes _____ No _____.

Explain your answer.

42(A). On November 29th you submitted a medical request. You stated this was the third request you had submitted since last Wednesday to see the doctor and you still hadn't seen the doctor or nurse.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 14.

(B). What medical condition did you need to see the doctor or nurse about?

Answer:

(C). In response, you were put on the list to see the doctor on December 1st.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 14.

43. You were seen by the doctor on December 1st and diagnosed with a rash and

prescribed minocycline and Elavil.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 22.

44. You received all medication prescribed to you by Dr. Mullins.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at pages 23-33.

45. You were released to the Arkansas Department of Correction (ADC) on January 1, 2007.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

46. When you were booked into the BCDC you did not bring any medications with you.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

47. Were you taking any medications for stress or anxiety on a daily basis prior to your incarceration at the BCDC?

Answer: Yes _____ No _____.

If you answered yes, please state: (a) what those medications were; (b) who prescribed those medications; (c) why you did not bring those medications with you or have them delivered to the BCDC; and (d) why you did not have your medical records sent to the BCDC.

If you answered no, please explain why you believe you needed the medications on a daily basis while you were in the BCDC.

48. Please explain in detail how you believe Dr. Mullins exhibited deliberate

[illegible]

[illegible]

51. All decisions about your medical care were made by Nurse Sue McDonald or Dr. Mullins.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

52. Personnel at the BCDC followed all orders given by Nurse McDonald and/or Dr. Mullins regarding medication to be given you or medical care you should receive.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

Detail below any further response you would like to make to the motion for summary judgment. If you have any exhibits you would like the court to consider, you may attach them to this response.

[illegible]

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

EXECUTED ON THIS _____ DAY OF _____ 2007.

DAVID JAMES FOUGERE